IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6615 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DANSING HEMATSING JHALA

Versus

GUJ WATER RESOURCES DEVE CORPN

Appearance:

MR GM AMIN for Petitioner

M/S TRIVEDI & GUPTA for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 08/09/2000

ORAL JUDGEMENT

1. This petition is filed under Article 226 of the Constitution of India with a prayer that an appropriate writ, order or direction be issued directing the respondents to grant the pay-scale of Operator Grade:B to

the petitioner with effect from the date of his appointment till 1.3.1990 with all consequential benefits. It is further prayed that the respondents be directed to extend to the petitioner all the benefits of higher pay-scale of Operator Grade:A as the petitioner fulfills all the requisite qualifications for the said post.

2. Learned counsel Ms.Sona Sagar appearing for learned counsel Mr. G.M.Amin for the petitioner has submitted that from the date of appointment, the petitioner was discharging duties of Tube-well Operator. He was collecting bills from the farmers. He was also operating tube-well and maintaining Registers which were otherwise required to be maintained by Tube-well Operator. It is stated by the petitioner that tough he was initially appointed as Workcharge Chowkidar on 11.1.1979 for a period of 29 days, he was continued in service on the said post and was discharging all the duties of Tueb-well Operator. It is, therefore, prayed that under the principle of "Equal pay for equal work", the petitioner should be allowed to draw salary from the first date of his appointment as if he was appointed as Tube-well Operator on regular basis. According to the petitioner, designation of Chawkidar given to him was an unfortunate event, though he was possessing qualification for Chawkidar Gr.B in the department.

3. This Court issued Rule and admitted this petition on 20.9.1992. This matter was tobe heard peremptorily on the returnable date i.e. on 22.10.1992. However,it is unfortunate that after several years, this matter is listed for Final Hearing. Looking to the averments made in the petition, in my view, alternative efficacious remedy was available to the petitioner on the day on which this petition came to be filed before this Court. Affidavit-in-reply filed by Shri V.P.Patel, Executive Engineer of respondent Corporation, indicates that the petitioner ought to have approached the Industrial Court and/or Labour Court for the issues agitated by him in this petition after the lapse of several years. During the course of arguments, learned counsel appearing for the petitioner has fairly submitted that the petitioner has retired from service and on the date of retirement, he was already working as Tube-well Operator Gr.B as he was promoted on the said post. The contention of the respondent Corporation is that on the date of filing of the petition, the petitioner was already promoted and working as Tube-well Operator, Gr.B, he ought to have approached the Labour Court.

4. The posting of the petitioner as Workcharge Operator was in accordance with the policy decision taken by the Board as immediately prior to this appointment of the petitioner, he was working as Helper on Tube-well maintained by the respondent Corporation. This petition can be dismissed on the ground that there is no need to invoke jurisdiction of this Court under Article 226 of the Constitution of India, as alternative efficacious remedy was available to the petitioner. However, as several years have lapsed after admission of the petition, at this stage, it would not be proper to dismiss this petition on this sole ground.

5. On merits, the petitioner has no case. Initially, he was posted as Workcharge Chowkidar purely on temporary and ad hoc basis and was given orders for 29 days. However, as he has served for long period, he was posted as regular Chowkidar. One of the documents produced with the petition also reveals that in the capacity of Chowkidar working with the respondent Corporation, he was transferred to other place i.e. at village Chekhla in the month of November, 1979. He was again transferred at his own request when he was working as Helper, at Ahmedabad vide order dated 17.12.1987. Thereafter, as per the policy of the Corporation, he was designated as Workcharge Operator in the month of August 1990. It seems that after redesignation of the post of Bore Helper to the post of Tube-well Operator, the petitioner was tempted to file this petition. He had never agitated this point before the department during these years i.e. from 1979 to 1991. Plain perusal of the papers produced by the petitioner, if considered in light of the averments made in the petition, in my view, some material aspect has been suppressed by the petitioner.

6. It is pertinent to note here that though the petitioner has made averments in the petition that he was discharging the duties which a regular employee was required to discharge, no details as to the nature of duties are given in the petition. Further, whether duties performed by the petitioner are that of regular nature or not is a disputed question of fact and cannot be gone into in this petition under Article 226 of the Constitution of India. Under the circumstances, on the ground of non-supply of details, suppression of material aspect and in view of the fact that disputed questions of fact cannot be gone into in a petition under Article 226 of the Constitution, this petition requires to be dismissed, even if we ignore the alternative efficacious remedy available to the petitioner.

7. For the reasons aforesaid, this is not a case wherein prayers as prayed for by the petitioner in this petition require to be granted by invoking jurisdiction under Article 226 of the Constitution of India. However, this Court is of the view that the petitioner is having alternative efficacious remedy to approach the Labour Court and/or Industrial Court, it would be open for the petitioner to approach the court concerned to redress his grievances voiced in this petition and if petitioner approaches the Court concerned by filing appropriate proceedings, it is hoped and expected that Court concerned will adjudicate the same on merits and in accordance with law without raising technical plea of limitation. With these observations, this petition is dismissed. Rule is discharged. In the facts and circumstance of the case, no order as to costs.

11.9.2000 [C.K. BUCH, J]
*rawal